

APPEAL NO. 990745

This appeal is considered in accordance with the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On March 24, 1999, a contested case hearing (CCH) was held. The issue concerned the scope and extent of the respondent's (claimant) compensable injury of \_\_\_\_\_. The claimant sustained an undisputed broken left femur; he contended that his left shoulder was also hurt at that time and that he further developed back problems due to an altered gait.

The hearing officer determined that the claimant did not hurt his left shoulder at the time of the accident, but that he had developed a back injury from the fact that his left leg became shorter as a result of his accident.

The appellant (carrier) has appealed. The crux of the appeal appears to be that there is no evidence to support that the claimant's left leg was shortened as a result of his injury, or that he developed stress to his low back as a result of altered body mechanics. The carrier asserts that its points of error relate to whether the claimant sustained a repetitive trauma injury, and that the hearing officer inappropriately put the burden of proof on the carrier. The carrier disputes the credibility of the testimony of the claimant's current treating doctor, and the doctor's testimony is impugned as supporting "the outcome that benefitted his bank account." There is no appeal from the claimant of the adverse finding on his shoulder, nor did he respond to the carrier's appeal.

DECISION

Affirmed.

The claimant was employed by (employer). On \_\_\_\_\_, the claimant was assisting four other workers with shifting a large cement slab. The slab, which weighed about 2,000 pounds, was 30 inches high, six feet wide, and six inches thick. It was undisputed that the slab fell back, hit the claimant, knocked him down, and broke his left thigh bone (femur). The claimant was taken to the hospital where he was hospitalized for five days after surgery. The hospital discharge summary describes his surgery as "an open reduction and internal fixation." Hardware was inserted as part of the surgery. His treating doctor at this time was Dr. H. On August 15, 1997, the claimant was described by Dr. H as "partially weight bearing." On October 31, 1997, the claimant was still having weakness in his leg. Dr. H's notes reflect a focus on the claimant's leg.

The claimant said he used crutches at home for two months and was walking another two months with a cane. He said his back began to get sore. At the time of the CCH, the claimant sought inclusion of his back pain and his shoulder pain as part of his injury.

The claimant changed treating doctors to Dr. T. Dr. T stated that he believed the claimant did not have a herniation, as there were no signs of radiculopathy, and that his

diagnosis of the back was lumbago. He felt that the claimant might need injections for pain, and he had referred him to a chiropractor for manipulations. Dr. T testified at the CCH and said that the claimant's left leg had healed slightly shorter than his right leg, and he described how he measured the difference with the claimant in a supine position. Dr. T said that, with a significant break in the bone such as that sustained by the claimant, such shortening as part of the natural healing process was not unusual and would happen in spite of the best orthopedic care. He also said that there was a slight rotation of the thigh. Dr. T also documented that the claimant's left thigh circumference was less than his right leg (indicating atrophy). Dr. T was questioned at length about the extent of the discrepancy.

Dr. T's method was to line up the claimant straight and measure the difference in the misalignment of the claimant's ankle bones. He pointed out that two other doctors had actually measured the length of the claimant's femur and found discrepancy. A podiatrist had prescribed a shoe insert for the claimant to use to alleviate his back problems. The podiatrist also recorded a one-centimeter leg length discrepancy in the claimant. Dr. T noted that the stress on the lumbar muscles would eventually lead to development of arthritis (and might have already done so).

The claimant was examined on June 8, 1998, by Dr. M, a designated doctor. Dr. M plainly records a measurement of the left leg, from the iliac crest, as two centimeters shorter than the right leg, while the length of the tibia bone (the leg below the knee) is the same bilaterally. Dr. M awarded a four percent impairment rating for range of motion deficits of the left leg.

The Appeals Panel has previously recognized that back injuries (even without a leg length discrepancy) can be a compensable part of leg and knee injuries where same lead to an "altered gait." In Texas Workers' Compensation Commission Appeal No. 93414, decided July 5, 1993, where we affirmed a determination that a claimant's left knee and back injuries followed or resulted from her undisputed compensable right knee injury, which had caused the claimant to walk with an altered gait. In Appeal No. 93414, we quoted Maryland Casualty Co. v. Sosa, 425 S.W.2d 871, 873 (Tex. Civ. App.-San Antonio 1968, aff'd per curiam, 432 S.W.2d 515 (Tex. 1968)), as follows:

The law is well settled that where an employee sustains a specific compensable injury, he is not limited to compensation allowed for that specific injury if such injury, or proper or necessary treatment therefore, causes other injuries which render the employee incapable of work.

In Texas Workers' Compensation Commission Appeal No. 941575, decided January 5, 1995 and Texas Workers' Compensation Commission Appeal No. 94067, decided February 28, 1994, we spoke in terms of a subsequent injury being compensable if it were the "direct and natural result of the compensable primary injury" or if it has "some connection to, and flowed naturally from the original injury." In Appeal No. 94067, we also noted that the question of whether the alleged follow-on injury is compensable is a question

of fact to be resolved by the hearing officer. Although the carrier asserts that Dr. T was purely an advocate in his testimony and that he testified consistent only with his financial interest, part of what a hearing officer weighs in considering credibility of testimony at a CCH includes an assessment of whether an arguable financial interest in the outcome influences the testimony. The finder of fact has the opportunity to observe the demeanor of the witnesses at a CCH. He can also consider evidence provided by other doctors, such as the designated doctor, whose reports are also part of the record.

We do not necessarily agree that the burden of proof was imposed on the carrier to disprove a discrepancy in the length of the legs, although we would observe that the recorded measurements of Dr. M, along with the testimony of Dr. T, probably were enough to establish a prima facie case as to a discrepancy, thus leaving the carrier with the burden of coming forward with evidence of no discrepancy. While the hearing officer factually found a discrepancy, he could have found that the claimant's gait was altered with or without a discrepancy, naturally resulting in a muscular back strain. In short, given the undisputed testimony that the claimant was on crutches and a cane, and given further objective documentation of his weakness and atrophy, the carrier's defense would not necessarily have been made even if a discrepancy were disproved. (Of course, the carrier has the option of seeking a required medical examination in the event of a dispute over objective indicia of further injury.)

The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza. We simply cannot agree that there is "no" evidence supporting the decision of the hearing officer, and, indeed, find that the evidence adduced sufficiently supported his determination that the claimant's back pain resulted from an altered gait which was the natural result of his severe femur fracture. We accordingly affirm the decision and order of the hearing officer.

We do not agree that the great weight and preponderance of the evidence is against the hearing officer's decision, and affirm the decision and order.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Thomas A. Knapp  
Appeals Judge